

IIN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.12.2007

CORAM

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

H.C.P.No.1413 of 2007

Kattai

.. Petitioner

Vs.

1. The Secretary to Government (Home)
Prohibition and Excise Department
Secretariat, Chennai-600 009.

2. The Commissioner of Police
Greater Chennai
Egmore, Chennai 8.

.. Respondents

Petition filed under Article 226 of the Constitution of India for
issue of Writ of Habeas Corpus as stated therein.

For Petitioner : Mr.R.Sekar

For Respondents: Mr.N.R.Elango

Addl. Public Prosecutor

O R D E R

(Made by P.D.DINAKARAN,J.)

The petitioner, mother of the detenu Chandru, who has been clamped with an order of detention by the second respondent, on arriving at the subjective satisfaction that the said detenu is a Goonda and he has to be detained under the provisions of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Officers, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982), seeks to call for the records relating to the order of detention made in Ref.No.318/2007, to quash the same and the produce the detenu, who is now confined in Central Prison, Chennai, before this Court and set him at liberty.

2.1. The order of detention dated 13.7.2007 was passed on the basis of ground case in Crime No.167 of 2007 for alleged commission of offences under Sections 341, 332, 336, 427, 307 and 506(2) IPC. On 3.7.2007, the Sub Inspector of Police, Kasimedu Police Station, along with police party, proceeded on special duty to secure absconding accused, including the detenu herein. On receiving reliable information that the detenu and two other accused are available at S.N.Chetty Road, the police party rushed there. On seeing the police party, the detenu and others tried to escape from the spot. When the police party surrounded them, the detenu and others took their knives and tried to cut the Sub Inspector of Police on his neck, however, he escaped from the said attack. They also tried cut other police party. But, they escaped from the attack. On noticing the atrocious activities, the public also joined the police personnel in apprehending the detenu and others. Immediately, the detenu and others rushed to the nearby bunk shop, picked up cool drink bottles and hurled the same against the police personnel, which broken into pieces and scattered all over the road. The detenu and others created panic at the spot and the public fearing danger to their lives ran hither and thither resulting in traffic dislocation. Hence, a case was registered and the detenu was arrested.

2.2. Apart from the above, the detaining authority also took note of the six adverse cases pending against the detenu in (i) Crime Nos.43/2007, 44/2007, 45/2007 and 48/2007 on the file of E3 Meenjur Police Station for the offence under Sections 447 and 379, IPC; (ii) Crime No.59/2005 on the file of B5 Harbour Police Station for the offence under Section 379 and 511, IPC; and (iii) Crime No.42/2007 on the file of N2 Kasimedu Police Station for the offence under Sections 147, 148, 332, 427, 336, 307 and 506(2), IPC and having satisfied that the detenu is indulging in activities which are prejudicial to maintenance of public order, passed the impugned order.

3. Heard both sides. We have perused the materials produced before us.

4. The main contention put forth by the learned counsel for the petitioner is that the detaining authority, having stated that the detenu is in remand in connection with last adverse case and the ground case, which relate to the offence under Section 307, IPC, had not arrived at subjective satisfaction with regard to the imminent possibility of the detenu coming out on bail in connection with the last adverse case and therefore, the same vitiates the impugned order of detention on the ground of non application of mind by the detaining authority.

5. Concededly, in the order of detention, the detaining authority has observed that the detenu is in remand in connection with the ground case and as well as the last adverse case and he has moved a bail application before the Principal Sessions Court, Chennai with respect to the ground case and the same is pending, and there is likelihood of his coming out on bail as in similar cases, bails are granted by the Sessions Court, after a lapse of time. The detaining authority, while dealing with the imminent possibility of the detenu coming out on bail, had chosen to refer only to the ground case, but not the last adverse case, which also relate to the offence under Section 307, IPC.

We are, therefore, satisfied that there is total non application of mind on the part of the detaining authority while passing the impugned order of detention. Accordingly, the impugned order of detention is vitiated and the same is quashed. This petition is allowed. The detenu is directed to be set at liberty forthwith unless his presence is required in connection with any other crime. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

kpl

To

1. The Secretary to Government
Prohibition and Excise Department
Fort St.George, Chennai-9.
2. The Commissioner of Police
Greater Chennai, Egmore, Chennai-8.
3. The Superintendent
Central Prison, Puzhal, Chennai-600 066.
4. The Public Prosecutor, High Court, Madras.

KS (CO)
km/7.1.

HCP No.1413 of 2007.